

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**JENNIFER MONTOYA and  
JOE C. MONTOYA,**

**Plaintiff,**

**v.**

**No. 14-cv-0980 GBW/SMV**

**NEW MEXICO INSTITUTE OF MINING  
AND TECHNOLOGY, GEORGE MURILLO,  
DAVID URBAN, SCOTT SCARBOROUGH,  
MONA TORRES, and LEONARD GARCIA,**

**Defendants.**

**MAGISTRATE JUDGE’S  
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court sua sponte. Plaintiffs filed their Complaint against Defendants on October 30, 2014. [Doc. 1] at 1. Pursuant to Fed. R. Civ. P. 4(m), Plaintiffs had 120 days from filing the Complaint—or until February 27, 2015—within which to effect service of process. By March 3, 2015, there was no indication on the record that service of process had been effected, and the Court ordered Plaintiffs to show cause why their case should not be dismissed without prejudice for failure to comply with the service provision of Rule 4(m). [Doc. 4]. Plaintiffs responded on March 24, 2014, requesting an extension of time until April 17, 2015, to amend their complaint. [Doc. 5] at 1. Plaintiffs explained that they intended to “add at least one more [D]efendant and additional cause(s) of action,” and would then “promptly” serve the amended complaint. *Id.* Although the filing of an amended complaint would not extend or restart the 120-day deadline for service of the *current* Defendants, *see Bolden v. City of Topeka*, 441 F.3d 1129, 1148 (10th Cir. 2006), the Court quashed the Order to Show Cause the following

day. [Doc. 6]. Nevertheless, Plaintiffs have not filed an amended complaint nor taken any other steps to move the case forward, and there is still no indication that any Defendant has been served.

**IT IS THEREFORE RESPECTFULLY RECOMMENDED** that this action be dismissed without prejudice for failure to comply with the service provision of Rule 4(m) and additionally for want of prosecution pursuant to D.N.M.LR-Civ. 41.1.

**THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN FOURTEEN DAYS OF SERVICE** of a copy of these Proposed Findings and Recommended Disposition, they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). **A party must file any written objections with the Clerk of the District Court within the 14-day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.**



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**STEPHAN M. VIDMAR**  
**United States Magistrate Judge**